

OSHA Response to Draft Report

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

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MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: 
DAVID MICHAELS, PhD, MPH

SUBJECT: Response to OIG's Draft Audit Report No. 02-13-203-10-105
"The Voluntary Protection Program: Controls Are Not Sufficient
to Ensure Only Worksites with Exemplary Safety and Health
Systems are in the Program"

This memorandum is in response to your September 13, 2013, transmittal of the Office of the Inspector General (OIG) Audit Report No. No. 02-13-203-10-105, *The Voluntary Protection Program: Controls Are Not Sufficient to Ensure Only Worksites with Exemplary Safety and Health Systems are in the Program*. Thank you for the opportunity to comment on your draft report and for addressing some of our concerns with the discussion draft.

While we acknowledge that there remain some deficiencies and inconsistencies in the management of the VPP program, we believe that OSHA is generally following its policies and procedures for implementing VPP and that the vast majority of the sites in the program have exemplary safety and health management systems. Most of the deficiencies identified in the report have been recognized by OSHA and identified in previous evaluations, including the GAO Report *OSHA's Voluntary Protection Programs: Improved Oversight and Controls Would Better Ensure Program Quality* (GAO-09-395, 2009) and OSHA's own internal review completed in 2011.

The report makes clear that some deficiencies continue to impact the program. However, the agency has made a substantial effort to address them over the last four years, and has significantly improved its management of the program. OSHA's most recent action, issuance of VPP Memo # 7 (May 2013), designed to better define immediate and required actions following fatalities, catastrophes, and enforcement actions, was noted in the report. The agency issued six previous memos and enhanced other areas of its program management beginning in 2009 to address inconsistencies and issues raised in the internal and GAO reports.

OSHA disagrees with a central statistic presented in the report. OIG repeatedly states that 13 percent of sites did not have systems that fully protected employees' safety and health. This includes 4 percent that were cited for serious violations and 9 percent with injury and illness rates above their respective industry averages. The vast majority of sites were addressed in accordance with OSHA policy. As a result, we believe that OIG's statement about these sites is

misleading because it is based on the questionable assumption that OSHA policy does not fully protect workers.

First, by issuing VPP Memo # 7 in May 2013, OSHA has addressed the 4 percent of sites that were cited for serious violations of OSHA standards. VPP Memo #7 eliminates the referenced variation in agency action following enforcement activity that was allowable under its previous policy.

Second, with regard to the remaining 9 percent, OSHA takes issue with OIG's presumption that simply having average injury and illness rates above industry rates, whether for two or three years, results in VPP participant programs that are not fully protective.

OSHA does not believe that every participant that exceeds the industry average is necessarily failing to fully protect its workers. OSHA provided its reasoning for using the 3-year average, which is included in the report. OSHA believes that given the sensitivity and variation of injury and illness rates, especially for small businesses, it is better to average rates over a specified timeframe and provide companies a designated period to correct conditions leading to higher rates. OSHA policy provides an opportunity for employers with higher rates to address these instances through the rate reduction plan.

Furthermore, injury and illness rates are only one of many factors that OSHA evaluates during the approval and reapproval processes, and when reviewing the annual evaluations. VPP sites have programs and procedures in place that promote employee involvement and assure notification of hazards and issues in the workplace. While we agree that generally this should lead to rates that are lower than industry averages, this may not always be the case. In addition, injury and illness rates are lagging indicators that provide only a partial impression of an overall program. As a result, we do not agree that the review of injury and illness rates alone provides enough data to support OIG's conclusion that participants with higher than industry average injury and illness rates do not have systems that fully protect employees. OIG may disagree with OSHA's policies, and we will review the policies, but OSHA does not believe that it is clear that the current policy necessarily results in the retention of VPP participants that do not provide a fully protective workplace.

OSHA does agree that data integrity and timeliness are issues that we must continue to address. As noted in our response below, we plan to take the additional steps to improve the program. OSHA takes seriously the VPP principle of continuous improvement, which we expect of both participants and ourselves.

In response to the draft report, please find OSHA's responses to the recommendations.

1. Reevaluate the policy of allowing worksites with high injury and illness rates to stay in VPP for up to 6 years.

OSHA response: OSHA believes that it evaluated the policy when it was adopted in 2003 but will reevaluate the policy as recommended. OSHA established a 3-year rate comparison (4 years for smaller participants) in 2003 due to substantial fluctuations from year to year in

industry rates that may not fairly represent the injury and illness situation in an industry. The use of a 3-year average in evaluating a worksite's injury and illness rates is included in other agency policies and procedures outside of the VPP program. While participants with higher than industry average rates after the 3 or 4 year period are not removed from the program, they are put on 2-year rate reduction plans during which the participants address the issues that led to the higher than average rates.

It is important to note that this policy impacts only a small number of VPP participants – only 6 percent of VPP participants (107 of 1,834) had 3-year rates above the industry average. Of those participants, OSHA followed its policy in most cases (80 of 107), and placed these sites on a rate reduction plan. As a result, injury and illness rates at these sites were addressed within 3-4 years. OSHA also uses other mechanisms (e.g., participant's annual self-evaluation and quarterly reports to the Region) to ensure participants' are monitored appropriately while rates are being addressed.

We believe that the statements about sites with 2-year averages that exceed BLS rates are not relevant to the overall discussion. The VPP manual does not require the Regions to take any action until a participant's 3-year rate is above the industry average and the OIG has presented no evidence that two years of exceeding the BLS rates necessarily indicates that workers are not fully protected. Nevertheless, as stated above, OSHA will examine this policy to determine if adjustments would improve the program.

2. **Improve data reliability by using one database with appropriate information controls, or implement processes ensuring reconciliations of VPP databases are conducted regularly and before reports on VPP statistics are generated.**

OSHA response: OSHA agrees that more effective processes should be established to ensure that the national VPP database is reconciled with the Regional VPP databases. OIG notes that the OSHA Information System (OIS) was the planned replacement for the 11 databases currently used (one national and ten regional). At present, OSHA has determined that OIS will not be expanded to include a module for VPP users. OSHA will pursue other steps to improve data reliability, including National Office coordination with the Regional Offices to conduct data integrity checks on a regular basis.

3. **Monitor implementation of VPP Memorandum #7 to ensure sites with fatalities and enforcement actions are addressed consistently and timely.**

OSHA response: OSHA agrees with this recommendation. OSHA is evaluating several options for improving notification and tracking of actions following fatalities and enforcement actions. OSHA currently requires that Regions notify the National Office of fatalities/catastrophes at VPP sites. Relevant information is tracked in a VPP fatality tracking database, which is being updated to improve tracking of the steps taken following an event. This system may be expanded to track other enforcement actions. OSHA is also exploring the addition of a VPP code in OIS to ensure that any investigation initiated at a VPP site is coded as such. If implemented, this will improve the notification and tracking of

sites where enforcement activities are ongoing and will reinforce the integrity of the existing VPP fatality database.

Updating the database and adding the code to OIS will allow OSHA the ability to consistently and timely address these sites. While these events are serious and require robust action on the part of the agency, we again would like to emphasize that they occurred at only 4 percent of VPP participants between FY 2009 and 2012.

4. Establish a system to analyze inspection information for continuous improvement of VPP.

OSHA response: OSHA agrees with this recommendation, but it will likely take some time and thoughtful consideration to decide how best to address it. As noted, this recommendation addresses a very small subset of the VPP sites in the program. OSHA will look at ways that it can coordinate more effectively with the Regions in reviewing fatality/enforcement cases and identifying areas for improving both the quality of participants' safety and health management systems and OSHA's evaluation process. The fatality database discussed above in recommendation 3 will facilitate the review of these fatality/enforcement cases.

OSHA currently uses success stories posted on its public web page to highlight VPP participants who have achieved outstanding results in protecting workers and improving safety and health management systems. Similarly, OSHA could gather inspection information from affected VPP sites and develop "lessons learned" summaries that could be shared internally and possibly with other VPP participants.

5. Establish a control to monitor whether sites with higher than industry average injury and illness rates are consistently and timely addressed within VPP.

OSHA response: OSHA has taken measures to address this recommendation but agrees that additional controls should be implemented.

OSHA clarified its controls for addressing participants with higher than industry average injury and illness rates in VPP Policy Memo #1 (Aug. 3, 2009). The Policy Memo lays out the steps that Regions must take when a VPP participant's 3-year rates exceed industry averages, including reviewing the rates during reapprovals and upon receiving annual self-evaluation reports, and documenting this review in the participant file. The Policy Memo also includes procedures for the National Office to ensure the Regions are complying with the evaluation timeframes.

In addition to documenting the procedures in Memo #1, the National Office conducts annual comprehensive reviews of Regional VPP participant files. This file review allows the National Office to monitor whether the Regions are following procedures and meeting deadlines. OSHA has also added categories to the annual data reports that the Regions submit to the National Office. The new categories document when a participant has been placed on a rate reduction plan, 1-year conditional status, and the dates the action was

implemented and completed. This level of tracking enables the National Office to monitor participants whose rates or safety and health management systems need improvement.

Improvements in data integrity made to address in response to Recommendation 2 will also help assure that the Region and National Office have similar data regarding sites for which action should and has been taken. Review of the data for these sites on a routine basis is central to the program and can be formalized in internal operating practices to address this recommendation.

6. Develop and implement processes and priorities that will ensure participants are evaluated timely for continuing eligibility for VPP. In developing these processes and priorities, OSHA should evaluate all viable options to ensure that the integrity of the program is maintained given the constraints of its available resources.

OSHA response: OSHA agrees with this recommendation. OSHA will continue to refine its processes and priorities to more efficiently match its resources to the need for onsite visits and ensure that participants are timely evaluated for continuing eligibility. OSHA made substantial progress in addressing the backlog of overdue VPP reevaluations in FY 2012 and 2013. However, OSHA's efforts to eliminate the backlog were hindered by resource limitations and sequestration, which restricted travel for onsite visits. OSHA is aware of the budget uncertainty, but will continue to look at all possible options to address the backlog while still processing new applications. OSHA is working with the Regions to develop a rational approach to prioritizing pending and overdue reapprovals. In addition, OSHA will implement ways to ensure greater Regional adherence to evaluation timeframes by providing periodic reports of overdue evaluations to the Regions.

OSHA has no plans to develop an alternative to the onsite evaluations. We believe that onsite evaluations are a critical part of the process for evaluating a participant's continuing eligibility for VPP.

7. Ensure reliable injury and illness data are used to report VPP successes tied with injury and illness statistics.

OSHA response: OSHA agrees with the recommendation and will continue to work with the Regions to improve the process for collecting injury and illness data.